

34220
SEC

SERVICE DATE - LATE RELEASE DECEMBER 4, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-124 (Sub-No. 2)

WATERLOO RAILWAY COMPANY
– ADVERSE ABANDONMENT –
LINES OF BANGOR AND AROOSTOOK RAILROAD COMPANY AND VAN BUREN
BRIDGE COMPANY IN AROOSTOOK COUNTY, MAINE

STB Docket No. AB-279 (Sub-No. 3)

CANADIAN NATIONAL RAILWAY
– ADVERSE DISCONTINUANCE –
LINES OF BANGOR AND AROOSTOOK RAILROAD COMPANY AND VAN BUREN
BRIDGE COMPANY IN AROOSTOOK COUNTY, MAINE

Decided: December 4, 2003

By motion filed on November 17, 2003, and prepared by outside counsel, Fraser Papers, Inc. (Fraser) requests that the Board allow the verified statement of James N. Heller, a consultant to the Trustee (Heller Statement), to be disclosed to in-house personnel of Fraser.

On November 20, 2003, replies in opposition to Fraser's motion were filed by the Trustee of the bankruptcy estate of the Bangor and Aroostook Railroad Company, et al. (Trustee), and the Montreal, Maine & Atlantic Railway Ltd. (MMA).

Fraser's motion for disclosure of the Heller Statement will be granted as specified herein. As noted by Fraser, much of the highly confidential information in the Heller Statement is information that was provided by, or otherwise available to, Fraser. The statement also contains commercially sensitive information provided by or derived from the Canadian National Railway Company (CN), the Trustee and the MMA. But Fraser and CN have agreed on the portions of the Heller Statement that should be redacted for the protection of CN.

The Trustee and MMA have failed adequately to explain why their interests cannot be protected by the redaction of commercially sensitive data. The Trustee argues that Heller's entire statement is Highly Confidential because it contains an analysis of Fraser's transportation options "... based in part on the understandings and interpretations of MMA personnel." The Trustee's

argument does not suffice to bring Heller's entire statement under the mantle of the Highly Confidential classification.

Moreover, the Trustee's broad interpretation of the Highly Confidential classification is inconsistent with the protective order issued in this proceeding on May 21, 2003. In Paragraph 15 of that order, the Board required that, in making a Highly Confidential submission to the Board, the filing party must make available a Confidential version reviewable by the other party's in-house personnel or provide a list of all "highly confidential" material that must be redacted from the Highly Confidential version prior to review by in-house personnel. Such in-house personnel, before receiving access to information or documents classified as "Confidential," must be given and must read a copy of the protective order and agree to be bound by its terms by signing a confidentiality undertaking as set forth in Exhibit A to the protective order. See protective order, Paragraph 4.

The Trustee will be directed to provide a Confidential version of the Heller verified statement to Fraser's outside counsel within 3 business days of the service of this order so that it can be given to Fraser's in-house personnel. The Trustee may consult as necessary with CN and MMA to identify those portions of Mr. Heller's verified statement that rely on Highly Confidential information from those entities.

It is ordered:

1. Fraser's motion to require disclosure of a "Confidential" version of the Heller Statement to Fraser's in-house personnel, under the terms of the protective order, is granted, as specified herein.

2. Within 3 business days of the service of this order, the Trustee must provide to Fraser's outside counsel a Confidential version of Witness Heller's verified statement so that it can be given to Fraser's in-house personnel.

3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary